IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1025 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law aJJJJ : NO

JJJJJ

Date of decision: 14/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Heard learned advocate Shri P.V. Nanavaty for the appellant and learned advocate Shri Mehul Shah appearing on caveat for respondents Nos. 1 to 7.

2. Admit. Learned advocate Shri Mehul Shah waives service on behalf of respondents Nos. 1 to 7. At the request of the learned advocates, the appeal is finally heard today.

3. In this appeal under the provisions of sec. 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') an award passed below Ex. 6 in Motor Accident Claims Petition No. 1 of 2000 has been challenged. Application at Ex. 6 was filed by the claimants in the said petition under the provisions of sec. 163A of the Act. After hearing the concerned parties and upon perusal of the affidavits, the Tribunal, by an award dated 17th October 2000 has directed the appellant insurance company to deposit a sum of Rs. 4,09,500/- with interest at the rate of 12% p.a. from the date of filing of the claim petition till the amount is deposited. The Tribunal has also given directions for actual payment as well as deposit of the said amount with a nationalised bank so that the amount so deposited can be paid after some time to the concerned claimants.

4. Being aggrieved by the above-referred award passed by the Tribunal, the appellant insurance company has approached this court.

5. Learned advocate Shri P.V. Nanavaty appearing for the appellant has submitted that the impugned award passed by the Tribunal is unjust because the amount awarded is definitely on higher side because no reliable evidence with regard to income of the deceased was adduced before the Tribunal. It has been submitted by him that if the deceased was having taxable income, the deceased must have been filing income-tax return and the best evidence which could have been produced by the respondents was the income-tax return filed by the deceased, but as no such evidence has been produced, it can be very well inferred that the deceased was not having even taxable income. In such a set of circumstances, it was not proper on the part of the Tribunal to award a substantial amount by way of

compensation to the respondents. It has been further submitted by him that there are all chances that in an application filed by the respondents under the provisions of sec. 166 of the Act, the respondents might be awarded much lesser amount than the amount that has been awarded at present and in that event it would be practically impossible for the appellant insurance company to recover the excess amount of compensation paid to the claimants. He has further submitted that so as to avoid possibility of getting less amount in an application filed under sec. 166 of the Act, the claimants might not proceed further with the said application. In the circumstances, it has been submitted by him that the impugned award must be quashed and set aside.

6. On the other hand, learned advocate Shri Mehul Shah appearing for the respondents has submitted that the award which has been passed by the Tribunal under the provisions of sec. 163A of the Act is just, legal and proper. It has been submitted by him that the amount which has been determined as compensation by the Tribunal is as per Schedule II of the Act and, therefore, it would not be proper to make any reduction in the amount of compensation which has already been awarded to the respondents. It has been further submitted by him that in fact an application under sec. 166 has already been filed by the respondents and the said application is likely to be heard in a very near future. During pendency of the said application, which has been filed under sec. 166 of the Act, the respondents are not likely to get the entire amount awarded by the Tribunal and he has also shown willingness of the respondents with regard to filing an undertaking that the application filed under sec. 166 of the Act would not be withdrawn and all efforts would be made to see that the said application is also finally disposed of at an early date.

7. We have heard the learned advocates and have perused the facts of the case. Upon perusal of the facts of the case it is very clear that an application filed by the respondents under sec. 166 of the Act is pending and the said application is likely to be disposed of in very near future. In the circumstances, we think it proper to direct respondent No. 1, widow of late Shri. Mubarak Aamad Turiya, to file an undertaking before the Tribunal on her behalf as well as on behalf of respondents Nos. 2 to 6, who are minor children of late Shri Mubarak Aamad Turiya, that the application filed under sec. 166 of the Act shall not be withdrawn by the respondents or shall not be permitted to be dismissed for default. It is also directed that they shall make all possible efforts to see

that the said application is disposed of as soon as possible.

8. In view of the undertaking which might be given by respondent No. 1, it is hoped that the application which ha been filed filed under sec. 166 of the Act would be disposed of as soon as possible and therefore it may not be necessary to pay the entire amount awarded to the present respondents immediately.

9. In the circumstances, it is directed that the entire amount awarded by the Tribunal shall be deposited by the appellant insurance company within 4 weeks from today. Out of the amount which is to be deposited, 35% of the amount shall be disbursed amongst the respondents in the proportion directed by the Tribunal. The said amount shall be paid to the respondents by account payee cheques. 65% of the amount shall be deposited with a nationalised bank for a period of 5 years in the names of the respondents in the proportion in which it is directed to be paid to them by the Tribunal. On the security of the said deposit no borrowings shall be permitted and the Fixed deposit Receipts shall remain in the custody of the Nazir of the court. Interest which might accrue on the said amount shall be given to the respondents in the proportion stated hereinabove.

10. The impugned award dated 17th October 200 passed below application under sec. 163A of the Act is modified accordingly and the appeal is allowed accordingly with no order as to costs. Decree in terms of the present order shall be passed.

(A.R. Dave, J.)

(J.R. Vora, J.)

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